

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DARNELL O. McGARY,

Petitioner,

v.

HENRY RICHARDS,

Respondent.

Case No. C05-5317RJB

ORDER TO SHOW CAUSE WHY
PETITION SHOULD NOT BE
DISMISSED

The petitioner in this action is seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254. This case has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrates' Rules MJR 3 and MJR 4.

Petitioner seeks to challenge civil commitment proceedings out of the Pierce County Superior Court. (Dkt. # 1). He does not show he sought review in the Washington State Supreme Court and he admits to having pending state court challenges to his commitment pending in the Washington State Court of Appeals.

In order to satisfy the exhaustion requirement, petitioner's claims must have been fairly presented to the state's highest court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985). No claim in this petition appears to have been

1 presented to the states highest court. A federal habeas petitioner must provide the state courts with
2 a fair opportunity to correct alleged violations of prisoners' federal rights. Duncan v. Henry, ---
3 U.S. ---, 115 S.Ct. 887, 888 (1995). It is not enough that all the facts necessary to support the
4 federal claim were before the state courts or that a somewhat similar state law claim was made. Id.,
5 citing Picard v. Connor, 404 U.S. 270 (1971) and Anderson v. Harless, 459 U.S. 4 (1982). Thus,
6 the claims appear unexhausted.

7 2. Accordingly, petitioner shall show cause why this petition should not be dismissed. A
8 response is due by **July 8th, 2005**. If petitioner fails to file a response or the response shows the
9 petition cannot go forward the court will enter a report and recommendation that the petition be
10 dismissed.

11 3. The Court Clerk is directed to send a copy of this Order to petitioner.

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13 DATED this 8th day of June, 2005.

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16 /S/ J. Kelley Arnold
17 J. Kelley Arnold
18 United States Magistrate Judge
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